

Message Text

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C O N F I D E N T I A L SECTION 1 OF 3 TEL AVIV 0942

LIMDIS

E.O. 11652: GDS
TAGS: PFOR, EAID, JO, US, IS
SUBJECT: MAQARIN DAM CONSULTATIONS - U.S. TECHNICAL TEAM VISIT

REF: STATE 7246

1. SUMMARY. US TECHNICAL TEAM MET WITH ISRAELI GOVERNMENT OFFICIALS ON FEBRUARY 2 AND 6 TO PRESENT HARZA INTERIM REPORT AND FOR MAQARIN DAM CONSULTATIONS. OVERALL, MEETINGS WENT VERY WELL, OFFERING GOI BETTER UNDERSTANDING OF MAQARIN DAM PROJECT AND PERMITTING GOI EXPRESSION OF AREAS OF SPECIFIC CONCERN. ISRAELIS INDICATED THAT THEY WELCOME ECONOMIC DEVELOPMENT OF JORDAN AND WERE INTERESTED IN COOPERATING WITH JORDAN IN DEALING WITH MAQARIN/YARMUK RIVER PROJECT. THEY STRESSED, HOWEVER, THAT THE SHARING OF WATER CAN ONLY BE ACCOMPLISHED THROUGH A "NEGOTIATED AGREEMENT"; THEY WELCOMED US GOOD OFFICES CONTRIBUTION TO THAT END. ISRAELIS PREPARED MAKE AVAILABLE TECHNICAL DATA THAT MAY BE USEFUL TO GOJ/HARZA IN PREPARATION FEASIBILITY STUDY. KEY AREAS OF CONCERN TO ISRAELIS ON WHICH THEY WISH TO
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KNOW JORDANIAN GOVERNMENT VIEWS ARE:
(A) EQUITABLE SHARING OF YARMUK; (B) FLOW AND QUALITY OF YARMUK WATERS; (C) ASSURANCE OF GOI HYDROELECTRIC RIGHTS (REFERRING TO PALESTINE ELECTRIC CORPORATION CONCESSION); (D) ECOLOGICAL AND ENVIRONMENTAL CONSIDERATIONS (LOWER JOREAN RIVER AND DEAD SEA); (E) WATER ALLOCATION FOR THE WEST BANK. GOI OFFICIALS REQUESTED

THAT THESE AREAS OF CONCERN BE CONVEYED TO JORDAN. WHILE CERTAIN GOI CONCERNS RELATING TO MAQARIN DAM EXPECTED, OTHERS RAISED BY GOI WERE UNEXPECTED (E.G. WEST BANK AND PALESTINE ELECTRIC CORP.) LEGAL CONSIDERATIONS ARE NOT LIKELY TO BE SIGNIFICANT IN WORKING OUT ARRANGEMENTS FOR MAQARIN DAM, WHILE TECHNICAL ASPECTS SUCH AS WATER ALLOCATION, UTILIZATION AND QUALITY AND POLITICAL CONSIDERATIONS ARE LIKELY TO LOOM LARGE IN DEALING WITH MAQARIN/YARMUK PROJECT. WE MUST ALSO CONCLUDE FROM GOI QUESTIONS, CONCERNS, AND REACTIONS AT MEETING THAT ANY FUTURE DISCUSSIONS AND NEGOTIATIONS BETWEEN JORDAN AND ISRAEL WILL BE COMPLICATED AND PROTRACTED. END SUMMARY.

2. ON FEBRUARY 2 AND FEBRUARY 6 US TECHNICAL TEAM MET WITH GOI OFFICIALS TO PRESENT THE HARZA INTERIM REPORT, SEEK GOI REACTION TO REPORT, AND OBTAIN TECHNICAL DATA THAT GOI PREPARED MAKE AVAILABLE TO GOJ/HARZA. ISRAELI DELEGATION WAS HEADED BY MOSHE ALON, DEPUTY DIRECTOR GENERAL, MINISTRY OF FOREIGN AFFAIRS; AND INCLUDED MENACHEM KANTOR, WATER COMMISSIONER; YAKOV VARDI, DEPUTY DG OF TAHAL; MEIR ROSENNE, LEGAL ADVISER, MFA; SHALOM SHERMAN, PLANNING DIVISION, MFA; ROBERT SABEL, LEGAL ADVISERS'S OFFICE, MFA; COL. HANAN ALON, MINISTRY OF DEFENSE; AND MICHAEL BAVLI, NORTH AMERICAN DIVISION, MFA. USG DELEGATION INCLUDED SELIG A TAUBENBLATT, DEPUTY DIRECTOR, NE/CD/AID, TEAM LEADER; WILLIAM B. DOZIER, COUNSELOR FOR ECONOMIC AND COMMERCIAL AFFAIRS, AMERICAN EMBASSY, TEL AVIV, WILLIAM ROMIG, AID WATER RESOURCES

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ENGINEERING CONSULTANT; RICHARD BAXTER, PROFESSOR INTERNATIONAL LAW, HARVARD UNIVERSITY, AID LEGAL CONSULTANT; AND THEODORE FEIFER, SECOND SECRETARY, EMBASSY TEL AVIV.

3. DURING FEBRUARY 2 MEETING TECHNICAL TEAM PRESENTED GENERAL BACKGROUND AND OUTLINE OF HARZA INTERIM REPORT INCLUDING UPDATED CHANGES IN SCOPE OF WORK AND OPTIONS RELATED TO FEASIBILITY STUDY. TWO COPIES OF HARZA REPORT WERE MADE AVAILABLE TO GOI WITH ONE COPY TO BE RETURNED TO AMERICAN EMBASSY TEL AVIV. DURING FIRST MEETING TAUBENBLATT EMPHASIZED THAT US TECHNICAL TEAM HAD COME TO ISRAEL IN AN INFORMAL GOOD OFFICES ROLE TO PROVIDE HARZA REPORT, AND WAS ACTING AS A CONDUIT TO FACILITATE THE FLOW OF INFORMATION BETWEEN ISRAEL AND JORDAN ON THE MAQARIN DAM YARMUK RIVER PROJECT. HE ALSO EMPHASIZED THAT IN MAKING HARZA REPORT AVAILABLE TO ISRAEL, GOJ REQUESTED THAT REPORT BE TREATED ON A CONFIDENTIAL BASIS AND THAT IT IS DESIRABLE THAT THESE TALKS ALSO BE TREATED ON A CONFIDENTIAL BASIS. ALON REAFFIRMED

THAT ISRAEL WOULD TREAT THE ENTIRE SUBJECT AND ALL CON-
VERSATIONS WITH COMPLETE CONFIDENTIALITY. TAUBENBLATT
INDICATED THAT THE GOJ WOULD WELCOME TECHNICAL DATA
RELATED TO THE FEASIBILITY STUDY THAT ISRAEL COULD
MAKE AVAILABLE INCLUDING PRECIPITATION DATA, WATER FLOWS,
ETC. THE BAXTER QUESTIONS WERE ALSO RAISED AND THE GOI
DELEGATION WERE ASKED TO CONSIDER THESE QUESTIONS FOR
DISCUSSION AT THE NEXT MEETING.

4. AT THE FEBRUARY 6 MEETING, AFTER RAISING
A FEW FACTUAL QUESTIONS ON THE HARZA RE-
PORT SEEKING CLARIFICATION ON WATER ALLOCATION/USAGE,
NUMBERS AND CONVEYANCE APPROACHEW, ALON STATED THEIR OVERALL
REACTION TO THE MAQARING DAM/YARMUK RIVER PROJECT. HE
INDICATED THAT WHILE THE ISRAELI DELEGATION OHLY HAD
A FEW DAYS TO REVIEW THE REPORT, AND WHILE THERE MAY
BE ADDITIONAL QUESTIONS AT A LATER DATE AS FURTHER
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REVIEW TAKES PLACE, OVERALL THERE ARE NO OBJECTIONS
TO THE PROJECT PER SE. ALON INDICATED THAT ISRAEL
WELCOMES THE ECONOMIC DEVELOPMENT OF ITS NEIGHBOR,
THAT WATER WAS A KEY INGREDIENT IN THE ECONOMIC DEVELOP-

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MENT OF THE AREA, THAT ISRAEL WAS HAPPY TO COOPERATE DURING THE 1950'S AND IS AGAIN PREPARED TO DO SO. HE SAID THAT COMMON DEVELOPMENT CAN ONLY BE REACHED BY NEGOTIATION OF PARTIES AND WELCOMED THE CURRENT US ROLE IN BRINGING THE PARTIES TOGETHER. ALON EMPHASIZED THAT WHILE THERE WAS NO DISAGREEMENT IN PRINCIPLE WITH THE MAQARIN PROJECT, THERE WERE FIVE KEY AREAS ON WHICH GOI WISHED TO HAVE THE GOJ'S VIEWS. THESE ARE:

(A) QUITABLE SHARING OF THE YARMUK WATERS; (B) MAINTAINING THE FLOW AND QUALITY OF WATERS IN THE BASIN IN LIGHT OF THE MAQARIN PROJECT; (C) HOW ISRAEL'S HYDROELECTRIC RIGHTS IN THE BASIN WOULD BE PRESERVED (LATER CLARIFIED TO MEAN HOW JORDANIANS PLAN TO DEAL WITH THE PALESTINE ELECTRIC CORPORATION CONCESSION); (D) PROBLEM OF ECONOMY AND ENVIRONMENT, PARTICULARLY DEALING WITH THE POSSIBLE DRYING UP OF THE JORDAN RIVER AND THE IMPLICATIONS WITH RESPECT TO THE DECLINING LEVELS OF THE DEAD SEA, INCLUDED COMMERCIAL (POTASH) AND RELIGIOUS CONSIDERATIONS AND; (E) WATER ALLOCATION FOR THE WEST BANK. ALON INDICATED THAT EVEN

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OUTSIDE OF POLITICAL CONSIDERATIONS, THERE WAS A NEED TO CONSIDER THE WATER RESOURCES AND NEEDS OF THE WEST BANK AREA; THAT IT IS INCONCEIVABLE THAT THE WEST BANK SHOULD HAVE BEEN IGNORED IN THE HARZA REPORT, AND THAT IT MUST BE ACCOUNTED FOR IN ANY STUDIES ON THE MAQARIN DAM/YARMUK RIVER PROJECT. ALON EMPHASIZED THAT KINGDOM OF JORDAN HAD UNILATERALLY TAKEN STEPS TO CHANGE THE SITUATION (I.E. THE MAQARIN DAM/YARMUK RIVER PROJECT) AND THUS THERE IS A NEED FOR JORDAN TO ADDRESS THE ABOVE AREAS OF CONCERN TO ISRAEL. HE SAID HE WAS CONFIDENT THAT NEGOTIATED AGREEMENT ON ALL THESE POINTS COULD BE ARRIVED AT. TAUBENBLATT INDICATED THAT DURING HIS FORTHCOMING VISIT TO JORDAN HE WOULD CONVEY THE ABOVE POINTS TO THE GOJ.

5. THE STATUS OF THE JOHNSTON PLAN, WATER ALLOCATIONS IN THE JORDAN BASIN AND THE YARMUK TRIANGLE CAME UP IN THE COURSE OF THE SECOND MEETING AND THE RESPONSES BY THE ISRAELI DELEGATION ARE OF CONSIDERABLE INTEREST. (A) THE JOHNSTON PLAN: THE ISRAELI DELEGATION FROM TIME TO TIME REFERRED TO THE JOHNSTON PLAN AS A PLAN DURING THE 1950'S ON WHICH AGREEMENT WAS REACHED ON THE TECHNICAL LEVEL BUT NEVER ON THE POLITICAL LEVEL. THEY FELT THAT THE JOHNSTON PLAN WAS AN INTRICATE AND COMPLEX WEB, THAT THE PLAN WAS TOO OPTIMISTIC ABOUT

THE WATER RESOURCES AVAILABLE, AND THAT THE BACKGROUND FIGURES OF THE JOHNSTON PLAN HAVE CHANGED SINCE THE 1950'S. HOWEVER, THEY STATED THAT THE "GENERAL ATTITUDE" TO THE JOHNSTON PLAN WAS RESPECTED BY BOTH SIDES, BUT NOT IN SPECIFIC DETAILS. WHEN SPECIFICALLY ASKED WHETHER THE JOHNSTON PLAN WAS STILL A BASIC FRAMEWORK FOR CONSIDERATION OF WATER ALLOCATION AND USE BY THE RIPARIAN COUNTRIES, PARTICULARLY ISRAEL AND JORDAN, THE ISRAELI LEGAL ADVISOR STATED THAT BROAD AGREEMENT WAS REACHED IN THE 1950'S BUT NOT A "SIGNED AGREEMENT" AND THAT THE ISRAELI DELEGATION AT THIS TIME

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"DOES NOT WISH TO GO BEYOND THAT STATEMENT".

(B) THE YARMUK TRIANGLE: ISRAEL QUESTION THE 17 MCM FIGURE FOR THE TRIANGLE IN THE HARZA REPORT. WHEN ASKED WHAT ISRAEL CONSIDERED AS ITS CURRENT WATER CONSUMPTION IN THE YARMUK TRIANGLE, MR. VARDI STATED THAT 40 TO 50 MCM'S WOULD APPROPRIATELY REFLECT CURRENT WATER CONSUMPTION AND THAT ISRAEL HAS WATER USE DATA VILLAGE BY VILLAGE THAT REFLECT THIS USAGE PATTERN. AT A LATER POINT 40 MCM WAS MENTIONED BY ISRAELI DELEGATION AS THE APPROPRIATE CONSUMPTION FIGURE FOR THE YARMUK TRIANGLE.

(C) BASIN ALLOCATIONS: ISRAELIS STATED THAT THE GENERAL PRINCIPLE WITH RESPECT TO WATER UTILIZATION WAS THAT THE JORDAN RIVER IS FOR ISRAELI USE AND THE YARMUK RIVER FOR JORDANIAN USE, EXCEPT FOR ALLOCATIONS OF WATER FROM YARMUK FOR THE YARMUK TRIANGLE. WHEN ASKED HOW CURRENT ISRAELI UTILIZATION COMPARED WITH JOHNSON PLAN ALLOCATIONS, VARDI STATED THAT JOHNSTON PLANE HAD PROVIDED RESIDUALS TO ISRAEL AFTER OTHER ALLOCATIONS AND THAT NO SPECIFIC QUANTITY WAS ALLOCATED TO ISRAEL. THUS HE COULD NOT COMPARE JOHNSTON PLAN WITH USES CURRENTLY BEING MADE BY ISRAEL.

6. TECHNICAL TEAM THROUGHOUT SECOND MEETING REQUESTED THAT GOI MAKE TECHNICAL DATA AVAILABLE TO JORDAN WHICH WOULD BE HELPFUL IN OVERALL FEASIBILITY STUDY. ISRAELIS INDICATED THAT THEY PREPARED TO START IMMEDIATELY TO PUT RELEVANT DATA TOGETHER RELATED TO SUCH AREAS AS PRECIPITATION, STREAM FLOWS, ETC. FOR JORDANIAN USE. KANTOR EMPHASIZED THAT IT WOULD BE MORE HELPFUL TO GOI IF THEY KNEW WHICH SPECIFIC QUESTIONS GOJ HAD OR SPECIFIC TECHNICAL INFORMATION GOJ DESIRED, AND THAT ISRAEL PREPARED TO BE HELPFUL IN THIS REGARD. HOWEVER, THE MORE SPECIFIC GOJ COULD BE ON DATA REQUIRED, THE

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BETTER. BAXTER'S QUESTIONS RELAED TO THE LEGAL STUDY WERE
ADDRESSED BY GOI DELEGATION -- SOME QUESTIONS ADDRESSED
SPECIFICALLY, SOME VERY GENERALLY. AT GOI INITIATIVE,
THE PALESTINE ELECTRIC CORP. CONCESSION WAS RAISED,
POINTING TO THE 70-YEAR CONCESSION FOR UTILIZATION OF
WATERS OF JORDAN AND YARMUK FOR GENERATING HYDROELECTRIC
POWER. GOI BELIEVES THAT CONCESSION IS STILL IN
FORCE AND MUST BE ADDRESSED IN THE MAQARIN DAM/YARUMK
RIVER PROJECT. ALTHOUGH THE EXTENT OF THE GOI CLAIM
TO PALESTINE ELECTRIC IS NOT CLEAR, IT WAS STATED AS AN
ISRAELI CONCERN. DETAILS OF BAXTER QUESTIONS AND GOI
ANSWERS WILL BE FORWARDED AS ATTACHMENT TO DETAILED MEMCON

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OF ABOVE MEETINGS.

7. ON BASIS DISCUSSIONS DURING PAST WEEK, PROFESSOR
BAXTER WAS ASKED TO ASSESS PRELIMINARY LEGAL IMPLICATIONS
OF MAQARIN DAM PROJECT. HE PROVIDED ASSESSMENT ALONG
FOLLOWING LINES:

LEGAL CONSIDERATIONS WILL NOT BULK LARGE IN WORKING OUT ARRANGEMENTS FOR THE MAQARIN DAM. THE ACCEPTED PRINCIPLE IS THAT THERE MUST BE AN EQUITABLE APPORTIONMENT OF THE WATERS OF AN INTERNATIONAL RIVER, SUCH AS THE JORDAN AND THE YARMUK. THIS DUTY APPLIES TO BOTH THE QUANTITY AND QUALITY OF WATER MADE AVAILABLE. THE UNOFFICIAL "HELSINKI RULES," REGARDED AS THE BEST SINGLE SOURCE FOR INTERNATIONAL RIVER LAW, DO NOT GIVE LEGAL PRIORITY TO ANY PARTICULAR USES OR PAST UTILIZATION OF WATER BUT MERELY PROVIDES A LIST OF FACTORS TO BE TAKEN INTO ACCOUNT, SUCH AS NEEDS, ALTERNATIVE SOURCES, ETC. ISRAEL RECOGNIZES APPLICABILITY OF EQUITABLE APPORTIONMENT RULE. TO THE EXTENT THE LAW OF BELLIGER-

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ENT OCCUPATION IS APPLICABLE TO WEST BANK, IT REQUIRES ISRAEL TO SAFEGUARD ECONOMIC LIFE OF THE AREA AND JORDAN, AS CLAIMANT TO SOVEREIGNTY, TO REFRAIN FROM MEASURES THAT WOULD MAKE IT IMPOSSIBLE FOR OCCUPANT TO DISCHARGE ITS DUTIES. AS ALLOCATION OF WATER LOOKS TO RIVER SYSTEM OR WATERSHED AS A WHOLE, INTERESTS OF LAND AND POPULATION OF WEST BANK MUST BE TAKEN INTO ACCOUNT IN ANY ALLOCATION. INTERNATIONAL LAW DOES REQUIRE GIVING OF NOTICE AS TO CHANGE IN USE OF WATERS WHICH MIGHT ADVERSELY AFFECT ANOTHER RIPARIAN AND OPPORTUNITY FOR AFFECTED RIPARIAN TO REPLY. JORDAN'S DUTY TO ISRAEL IS BEING DISCHARGED BY FURNISHING OF HARZA REPORT AND RELATED INFORMATION. NO SANCTIONS ARE IMPOSED FOR FAILURE TO FURNISH INFORMATION OR TO RESPOND. THE AREA TO BE TAKEN INTO ACCOUNT IN ALLOCATION IS CONTROVERSIAL. DRAINAGE BASIN CONCEPT, WHICH WOULD SEE JORDAN AND TRIBUTARIES WHOLE, IS NOT UNIVERSALLY ACCEPTED, AND EXTRA-BASIN DIVERSIONS, AS IN NATIONAL WATER CARRIER, ARE NOT NECESSARILY IN VIOLATION OF DRAINAGE BASIN CONCEPT. BAXTER PREPARING FINAL REPORT WHICH WILL PROVIDE DETAILS OF HIS LEGAL FINDINGS.

8. WE SEE MEETINGS WITH GOI OFFICIALS AS FIRST STEP IN FAMILIARIZING ISRAELI GOVERNMENT WITH PARAMETERS OF MAQARIN DAM/YARMUK RIVER PROJECT AS REFLECTED HARZA INTERIM REPORT. OUR ASSESSMENT OF ISRAELI REACTION IS ONE OF WILLINGNESS TO COOPERATE WITH JORDAN ON ELEMENTS OF MAQARIN DAM PROJECT BUT STRONG DESIRE TO KNOW JORDANIAN THINKING AND PLANS WITH RESPECT TO FIVE AREAS ADDRESSED ABOVE. WE DOUBT THAT GOI WILL REVEAL THEIR POSITION RELATED TO KEY ASPECTS MAQARIN DAM/YARMUK RIVER PROJECT BEFORE JORDAN ADDRESSES FIVE AREAS OF ISRAELI CONCERN; THEY INDICATED A STRONG DESIRE TO RECEIVE JORDANIAN COMMENTS ON THE FIVE POINTS WELL BEFORE COMPLETION OF THE FEASIBILITY STUDY. AREAS OF DIFFERENCE BE-

TWEEN JORDAN AND ISRAEL LIKELY TO INVOLVE WATER ALLOCA-
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TION FOR THE YARMUK TRIANGLE (17 MCM'S IN THE HARZA RE-
PORT VS. 40 MEM'S WHICH ISRAEL CONSIDERS ITS PRESENT
USAGE), HOW TO DEAL WITH WATER ALLOCATIONS TO THE WEST
BANK, ENVIRONMENTAL AND ECOLOGICAL CONSIDERATIONS, THE
FLOW OF YARMUK WATER DURING THE DRY SUMMER MONTHS (I.E.
WHETHER 2.3 CUBIC METERS PER SECOND WILL BE AVAILABLE) AND POSSIBLY
THE PALESTINE ELECTRIC CORPORATION CONCESSION ISSUE. THESE
ARE ALL COMPLEX ISSUES WHICH HAVE BEEN IMMERSED IN CON-
SIDERABLE CONTROVERSY BETWEEN THE PARTIES OVER THE PAST
25 YEARS WITH THE WEST BANK AS A NEW DIMENSION TO BE
DEALT WITH. LEGAL CONSIDERATIONS ARE NOT LIKELY TO BE
SIGNIFICANT IN WORKING OUT ARRANGEMENTS FOR MAQARIN
PROJECT, BUT TECHNICAL CONSIDERATIONS SUCH AS WATER ALLOCATION,
UTILIZATION AND QUALITY AND POLITICAL FACTORS WILL
BE OVERRIDING. WE THUS SEE DIFFICULT AND PROTRACTED
NEGOTIATIONS AHEAD FOR JORDAN AND ISRAEL.

9. DETAILED MEMCONS OF FEBRUARY 2 AND FEBRUARY 6 MEETINGS
BEING POUCHED INCLUDING GOI RESPONSE TO BAXTER
QUESTIONS RELATING TO LEGAL CONSIDERATIONS. TAUBEN-
BLATT AND ROMIG DEPARTING FOR AMMAN FEBRUARY 9.
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